

ESTTA Tracking number: **ESTTA418389**

Filing date: **07/07/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Swarner Expeditions, LLC		
Entity	Limited Liability Company	Citizenship	Colorado
Address	Box 3051 Breckenridge, CO 80424 UNITED STATES		

Attorney information	Anne M. Sterba Rothwell, Figg, Ernst, & Manbeck, P.C. 1425 K Street NW 8th Floor Washington, DC 20005 UNITED STATES PTO-TM-Email@rothwellfigg.com Phone:202-783-6040
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Applicant Information

Application No	85235062	Publication date	06/14/2011
Opposition Filing Date	07/07/2011	Opposition Period Ends	07/14/2011
Applicant	Sinclair, Gary Harold 11203 Ranch Road 2222, Apt. 2501 Austin, TX 78730 UNITED STATES		

Goods/Services Affected by Opposition


Class 014. All goods and services in the class are opposed, namely: Bracelets; Bracelets made of leather, rubber silicon, or metal; Charity bracelets; Key chains as jewellery; Necklaces; Pendants; Rubber or silicon wristbands in the nature of a bracelet
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	The Opposed Mark so closely resembles Swarner's previously used mark that its use, in connection with the goods aforementioned, is likely to cause confusion, or to cause mistake or deceive, in violation Section 43(a) of the Trademark Act of 1946, 15 U.S.C. Â§ 1125(a).

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85305041	Application Date	04/26/2011
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	KEEP CLIMBING		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 041. First use: First Use: 2002/06/00 First Use In Commerce: 2002/06/00 EDUCATIONAL AND ENTERTAINMENT SERVICES, NAMELY PROVIDING MOTIVATIONAL AND EDUCATIONAL SPEAKERS IN THE FIELD OF CANCER SURVIVORSHIP, HOPE AND OVERCOMING CHALLENGES; ORGANIZING OF SPORTS EVENTS, NAMELY CLIMBING EVENTS</p> <p>Class 042. First use: PROVIDING TEMPORARY USE OF NON-DOWNLOADABLE SOFTWARE TO ENABLE UPLOADING, CAPTURING, POSTING, SHOWING, EDITING, PLAYING, STREAMING, VIEWING, PREVIEWING, DISPLAYING, TAGGING, BLOGGING, SHARING, MANIPULATING, DISTRIBUTING, PUBLISHING, REPRODUCING, OR OTHERWISE PROVIDING ELECTRONIC MEDIA, MULTIMEDIA CONTENT, VIDEOS, MOVIES, PICTURES, IMAGES, TEXT, PHOTOS, USER-GENERATED CONTENT, AUDIO CONTENT, AND INFORMATION VIA THE INTERNET AND OTHER COMMUNICATIONS NETWORKS</p>		

Attachments	85305041#TMSN.jpeg (1 page)(bytes) 3963-102 Notice of Opposition.pdf (10 pages)(284067 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Anne M. Sterba/
Name	Anne M. Sterba
Date	07/07/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application
Serial No. 85/235,062 in the
Official Gazette dated June 14, 2011 on
Page TM 630

Swarner Expeditions, LLC,	:	
	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. _____
	:	
Gary Harold Sinclair,	:	
	:	
Applicant.	:	
	:	

TRADEMARK TRIAL AND APPEAL BOARD
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

Swarner Expeditions, LLC, a Colorado Limited Liability Company, (hereinafter "Swarner") with an address of Box 3051, Breckenridge, CO 80424, believes that it will be damaged by registration of the mark KEEP CLIMBING (hereinafter the "Opposed Mark") for: "Bracelets; Bracelets made of leather, rubber silicon, or metal; Charity bracelets; Key chains as jewellery; Necklaces; Pendants; Rubber or silicon wristbands in the nature of a bracelet" in International Class 14 as set forth in Application Serial No. 85/235,062, filed on February 5, 2011, and published on June 14, 2011 (hereinafter the "Application"), owned by Gary Harold Sinclair, with an address at 11203 Ranch Road 2222, Apt. 2501, Austin, Texas 78730

(hereinafter the "Applicant"), and hereby opposes the same. As grounds for this opposition, it is alleged that:

1. Since long prior to the filing date of the Application, Swarner has extensively used, advertised and promoted the mark KEEP CLIMBING (hereinafter the "KEEP CLIMBING" Mark) for a variety of services in International Classes 41 and 42.

2. Swarner is the owner and user (by assignment or otherwise) of U.S. Application No. 85/305,041, filed on April 26, 2011 for KEEP CLIMBING for, "Educational and entertainment services, namely providing motivational and educational speakers in the field of cancer survivorship, hope and overcoming challenges; organizing of sports events, namely climbing events" in Class 41 and "providing temporary use of non-downloadable software to enable uploading, capturing, posting, showing, editing, playing, streaming, viewing, previewing, displaying, tagging, blogging, sharing, manipulating, distributing, publishing, reproducing, or otherwise providing electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content, and information via the internet and other communications networks" in Class 42.

3. A printout from the electronic database of the U.S. Patent and Trademark Office showing the current status and title of the application listed above is attached as **Exhibit A** to the Notice of Opposition.

4. By virtue of the uncompromising and prestigious quality of the services provided, advertised, and promoted under the KEEP CLIMBING mark and by virtue of the extensive promotion and advertising of such high quality services for more than nine years, the KEEP CLIMBING Mark has become well known and have acquired extensive recognition and strength throughout the United States.

5. Upon information and belief, Applicant has not yet started to use the Opposed Mark in U.S. commerce, and therefore does not have a priority date earlier than February 5, 2011, the Application's filing date.

6. Applicant has no connection whatsoever with Swarner and no permission or license was given by Swarner to Applicant to use the Opposed Mark.

7. Swarner's use of the KEEP CLIMBING Mark in connection with goods in International Classes 41 and 42 is such that members of the public will perceive the Opposed Mark in close proximity with the Swarner Mark and mistakenly assume that the Opposed Mark emanates from Swarner.

8. The Opposed Mark so closely resembles Swarner's previously used mark that its use, in connection with the goods aforementioned, is likely to cause confusion, or to cause mistake or deceive, in violation Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a). Purchasers likely will assume that Swarner is somehow affiliated with, licenses, or endorses, Applicant's use of the Opposed Mark when Swarner is not connected in any way with Applicant or the use of the Opposed Mark.

9. The Opposed Mark so closely resembles Swarner's previously used marks that its use, in connection with the goods aforementioned, is likely to cause confusion, or to cause mistake or deceive, in violation Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d). Purchasers likely will assume that Swarner is somehow affiliated with, licenses, or endorses, Applicant's use of the Opposed Mark when Swarner is not connected in any way with Applicant or the intended use of the Opposed Mark.

10. The registration of the Opposed Mark will be inconsistent with Swarner's rights in the KEEP CLIMBING Mark, the application pleaded above and Swarner's rights at common law and will be damaging to Swarner.

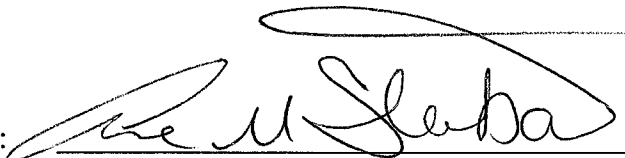
WHEREFORE, Swarner prays that this opposition be sustained and registration on the Application be refused.

Respectfully submitted,

Swarner Expeditions, LLC

Date: July 7, 2011

By:



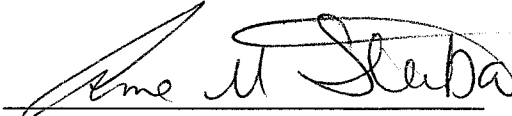
Anne M. Sterba
Attorney for Opposer
Rothwell, Figg, Ernst & Manbeck P.C.
1425 K Street, N.W., Suite 800
Washington, D.C. 20005
202-783-6040

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF OPPOSITION and Exhibit A has been served by First Class mail, postage prepaid, to

SINCLAIR, GARY HAROLD
11203 RANCH ROAD 2222 APT 2501
AUSTIN, TX 78730-1033

On this 7th day of July, 2011.



Anne M. Sterba

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-07-07 10:33:53 ET

Serial Number: 85305041 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

KEEP CLIMBING

(words only): KEEP CLIMBING

Standard Character claim: Yes

Current Status: New application will be assigned to an examining attorney approximately 3 months after filing date.

Date of Status: 2011-04-29

Filing Date: 2011-04-26

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 042 -New Application Processing

Date In Location: 2011-04-29

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Swarner Expeditions, LLC

Address:
Swarner Expeditions, LLC

Swarner Expeditions, LLC v. Gary Harold Sinclair
Exhibit A to the Notice of Opposition
Page 1 of 4

Box 3051
Breckenridge, CO 80424
United States
Legal Entity Type: Limited Liability Company
State or Country Where Organized: Colorado

GOODS AND/OR SERVICES

International Class: 041

Class Status: Active

EDUCATIONAL AND ENTERTAINMENT SERVICES, NAMELY PROVIDING MOTIVATIONAL AND EDUCATIONAL SPEAKERS IN THE FIELD OF CANCER SURVIVORSHIP, HOPE AND OVERCOMING CHALLENGES; ORGANIZING OF SPORTS EVENTS, NAMELY CLIMBING EVENTS

Basis: 1(a)

First Use Date: 2002-06-00

First Use in Commerce Date: 2002-06-00

International Class: 042

Class Status: Active

PROVIDING TEMPORARY USE OF NON-DOWNLOADABLE SOFTWARE TO ENABLE UPLOADING, CAPTURING, POSTING, SHOWING, EDITING, PLAYING, STREAMING, VIEWING, PREVIEWING, DISPLAYING, TAGGING, BLOGGING, SHARING, MANIPULATING, DISTRIBUTING, PUBLISHING, REPRODUCING, OR OTHERWISE PROVIDING ELECTRONIC MEDIA, MULTIMEDIA CONTENT, VIDEOS, MOVIES, PICTURES, IMAGES, TEXT, PHOTOS, USER-GENERATED CONTENT, AUDIO CONTENT, AND INFORMATION VIA THE INTERNET AND OTHER COMMUNICATIONS NETWORKS

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-04-29 - New Application Office Supplied Data Entered In Tram

2011-04-29 - New Application Entered In Tram

Swarnar Expeditions, LLC v. Gary Harold Sinclair
Exhibit A to the Notice of Opposition
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ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Anne M. Sterba

Correspondent

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United States Patent and Trademark Office

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Assignments on the Web > Trademark Query

No assignment has been recorded at the USPTO

For Serial Number: 85305041

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.1
Web interface last modified: Apr 30, 2009 v.2.1

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